Ordinance itself came into force on January 1, 1949, and from the words used in the legislation it could be said that the hiatus was an oversight and not intentional.

On the facts there, we would have come to the same conclusion. But here, on the contrary, the appellants could not have appealed before the amendment and the amendment only gives him a right to appeal as to the future. But with respect we would not agree with the above case in so far as it decided that an enactment relating to appeals is one that treats of procedure and practice and therefore has a retrospective construction in the absence of a clear indication to the contrary.

In the circumstances we would uphold the learned Deputy's preliminary objection and strike off this appeal.

Order accordingly.

Solicitors: *Jagjit Singh & Co.*

PUBLIC PROSECUTOR v. OSMAN BIN APO HAMID & ANOR.

[A.Cr.J. (Abdul Razak J.) November 4, 1976]

[Kuala Trengganu — Criminal Appeal No. 12 of 1975]

Food Control — Carrying bags of rice exceeding minimum allowed by permit — Contravention of Lembaga Padi dan Beras Negara (Restriction of Movement) Trengganu Regulation — Plea of absence of mens rea — Question of strict liability.

The respondents were found carrying bags of rice in excess of that allowed by the permits which they produced. They were detained and subsequently charged. Both respondents admitted knowledge of the fact that they carried 130 bags of rice but they denied knowledge of the number allowed in the permits, that is, 80 bags only.

The prosecution appealed against the decision of the lower court acquitting the accused.

Held, allowing the appeal: looking at the statute and the regulations under which it was made, it must have been intended that the latter be of strict liability as it was necessary to maintain a stable and proper price for padi and rice for the consumer and the padi planter and to restrict movement of rice and padi in the States so as to not to offset the balance of distribution of the commodity and its expected price levels in the various States.

Cases referred to:-

(1) *Sweet* v. *Parsley* [1970] A.C. 132.

(2) *Alphacell Ltd.* v. *Woodward* [1972] 1 Q.B. 127.

CRIMINAL APPEAL.

Mohamed Nor bin Mohamad (Deputy Public Prosecutor) for the appellant.

Sri Ram for the respondents.

Abdul Razak J.: This is an appeal against the decision of the President Sessions Court at Kemaman wherein he acquitted the accused after calling for the defence. The D.P.P. has appealed against the acquittal. The charge reads as follows:

"That you on the 15th day of February, 1973, at about 7.05 p.m. at 34¼ m.s. Kuantan/Kemaman road, in the District of Kuantan, in the State of Pahang, being the driver of M/Lorry No. BT. 9841, did remove 50 bags of rice in the said vehicle from controlled area of the State of Trengganu into Pahang, without the prior written permission of the Director General, in contravention of the Lembaga Padi dan Beras Negara (Restriction of Movement) Trengganu Regulation vide P.U.(A) 320/71 and that you have thereby committed an offence punishable under section 27(1) of the Lembaga Padi dan Beras Negara Act No. 47 of 1971."

The facts are simply these: On February 15, 1973 at about 6 p.m. an inspector from the L.P.N. and two policemen held a road block at 34¼ milestone Kemaman/Kuantan road. They stopped a lorry driven by the 1st respondent with the attendant, 2nd respondent, in it and found to be carrying bags of rice. PW(1) said the driver produced 2 permits, P(1) & P(2). The permits merely allowed the lorry to carry 80 bags of Mahsuri rice. There were, however, found 50 bags extra. Both the respondents were therefore detained and subsequently charged. The P.C. gave evidence more or less to the same effect. There was no doubt that 130 bags were carried because they were later counted and confirmed at the LPN office. The 50 bags of rice were later sold and $3,112.40 realised. In their defence, the 1st respondent said he was asked to load the lorry with the rice by the hirer of the lorry. He knew he was carrying 130 bags of rice. The permit was taken by the 2nd respondent from the LPN office but he did not read it. He said he was a driver for the last 6 years. Normally, he said, he would just keep the permit suggesting that he had had to do with permits before. He thought it covered the 130 bags. The 2nd respondent also said they carried 130 bags of rice but he did not know what was written in the permit. In cross-examination he said he cannot read, so he did not check the permit. But later he said he could read but the figure in the permit was illegible. It was submitted by the defence that the defendants had no knowledge that they were allowed to carry 80 bags only and should not be convicted. I do not think I can agree with that contention. In my view the offence is one of strict liability in which the mental element is negatived by the legislature. I have no doubt that the legislature intended that the category of physical acts of this nature must itself constitute an offence if only because the alternative would mean that the apprehension of offences of this nature would be well nigh difficult if not impossible. The creation of absolute offences is not new. Indeed *Sweet* v. *Parsley*(1) which I shall refer to takes cognizance of this fact. Lord Reid at page 148 says:

"Our first duty is to consider the words of the Act: if they show a clear intention to create an absolute offence that is an end of the matter."

The problem faced by the legislature if in all cases *mens rea* is required can be quite frustrating as Lord Reid says at page 150:

"The choice would be much more difficult if there were no other way open than either *mens rea* in the full sense or an absolute offence; for there are many kinds of case where putting on the prosecutor the full burden of proving *mens rea* creates great difficulties and may lead to many unjust acquittals."

And Lord Morris at page 152 in the same vein had this to say on the requirement of *mens rea*:

"But as Parliament is supreme it is open to Parliament to legislate in such a way that an offence may be created of which someone may be found guilty though *mens rea* is lacking. There may be cases in which as Channell J. said in *Pearks, Gunston & Tee Ltd.* v. *Ward* [1902] 2 K.B. 1, 11:

'... the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any *mens rea* or not, and whether or not he intended to commit a breach of the law.' "Thus in diverse situations and circumstances and for any one of a variety of reasons Parliament may see fit to create offences and make people responsible before criminal courts although there is an absence of *mens rea*."

Lord Pearce has given us some of the requisites to look for in offences of strict liability. He said at page 156:

"But the nature of the crime, the punishment, the absence of social obloquy, the particular mischief and the field of activity in which it occurs, and the wording of the particular section and its context, may show that Parliament intended that the act should be prevented by punishment regardless of intent or knowledge."

I have been asked to say that by the decision of *Sweet* v. *Parsley* the rationale that mental element of *mens rea* can be excluded by statute has seen its last days and that that case has finally laid down the rule which now is settled law that a presumption of *mens rea* must always be implied even in cases where the legislature merely makes the commission of the prohibited act an offence. But this apparently does not seem to be true even after the case. In the case of *Alphacell Ltd.* v. *Woodward*,[2] the courts seem to have quite firmly and categorically viewed *Sweet* v. *Parsley* as merely laying a general proposition of law and that courts are still free to determine whether a given statute is intended to oust the requirement of *mens rea* or not. In that case the statute provides that:

"a person commits an offence (under the Rivers Pollution Act 1951) if (a) he causes or knowingly permits to enter a stream any poisonous, noxious or polluting matter..."

The defendants owned a factory which operated to discharge industrial effluents which they made to flow and collect in a tank by the side of the river. The apparatus was worked in such a manner that the water was returned to the factory to be circuitously re-used and its capacity in the tank maintained at a level as not to overflow into the river. At some stage or another the tank overflowed and the effluent was discharged into the stream although precaution was earlier taken and examination made by the defendants' employees to see that the water level in the tank remained the same. The defendants were, nevertheless, held liable for polluting the stream by their discharge. Widgery L.J., Lord Parker C.J. agreeing with him, at page 134 said:

"It may be, in my judgment, that if this were a civil action the defendants could show that they had taken reasonable care to prevent the overflow of the tanks, but it does not seem to me that their activities become any the less a cause of the pollution of the river merely because their safety devices prove ineffective and let them down in the event.

Mr. Drake (counsel for the defendants) argues, however, that it is an essential constituent of this offence that the defendants should have intended the entry of the polluting effuent into the river, or should have been negligent in allowing such entry to occur. He has referred us to *Sweet* v. *Parsley* [1970] A.C. 132, and he contends that to hold the defendants guilty in the absence of intent or negligence on their part would be to put this offence into the category of the so-called absolute offences, with the result that a landowner who brought a polluting substance on to his land could never have a defence if the substance later escaped into the river by whatever means.

I do not find it necessary to consider whether this is an offence of absolute liability, because my provisional view of the case already stated does not involve the proposition that a landowner would be automatically liable under the section for the escape of polluting matter from his land."

In other words, Widgery L.J., was saying that short of any third party intervention once it is established that the defendant has caused the pollution he is liable regardless of whether he had knowledge of the defect or whether he had been negligent or not. He was clearly stating in terms that the mental element or *mens rea* has no relevance or consequence in such type of offence where the legislature expressly provides that the offence is committed by the commission of the physical act. Considering the scope and extent to which the court nevertheless was prepared in that case to consider a statute as excluding *mens rea* especially bearing in mind that the word "cause" therein was inextricably linked with the word "knowingly" connotating thereby the requirement of *mens rea*, how could it ever be said that in our case which is not even remotely near those words and phrases it was not intended to exclude the mental element of *mens rea*. Bearing in mind also that the act contemplated is the act of the defendant or the doer himself and not unlike *Sweet* v. *Parsley* or that in *Alphacell Ltd.* v. *Woodward* the act or omission of the defendant's servant or agent.

One has to study the purport of the LPN Act 1971 under which PU(A) 320/71 was promulgated and I think it is obvious that looking at the statute and the regulations under which it was made, it must have been intended that the latter be of strict liability if only because in the context in which the Government deems it necessary in order to maintain a stable and proper price for padi and rice for the consumer and the padi planter by having their prices fixed at different levels at different States, that the movement of rice and padi in the States and particularly that from the border State of Thailand should not be allowed unrestricted as to offset the balance of distribution of that commodity in the country as a whole and therefore to upset its expected price levels in the various States. There is always a temptation in a situation like this to circumvent the regulation by unauthorised smuggling and therefore it is of the utmost importance that the regulation should be as strict as possible as to offer the minimum opportunity for evasion and deception.

Be that as it may, it seems to me quite obvious from the answers given by the two respondents that they were not giving an answer which a reasonable person would expect because it is quite unthinkable that any driver with 6 years' experience behind him and apparently having had to do with permits before would just keep the permit and never read it as the 1st respondent alleged that he did. As far as the 2nd respondent was concerned he was not sure whether to say he could read or could not read. Finally he decided to say that he could read but the writing was illegible. But strange indeed that other people seemed to have no difficulty in reading the same. P(1) & P(2), the permits, were in print and apart from the signature in P(1) nothing in the two documents was stated to be illegible but if in fact it was illegible what attempt did he make to get someone to explain it. We have not been given the benefit of that answer. I think this was not a case of not reading the permit

or not knowing to read and therefore not knowing what was inside it but simply a case of knowing what was inside the document and denying it or else they were so negligent in not caring to read it. So much so that they must be deemed to know what was inside the permit. Mistaken belief in the existence of facts which if true would make the accused's act innocent must I venture to say be a true one; if the mistaken belief is a self-induced one then it could hardly be a defence. Otherwise it could easily be said by an accused person in an offence of this nature in order to exonerate himself that he did not look at the permit when normally one would expect that he would. But to say that he did not look at the permit when he is naturally expected to do so is to say the least being grossly negligent and that is as good as knowledge itself (see *Ratanlal* 22nd Edition at page 721 under the heading: Gross negligence may amount to knowledge).

In the circumstances, I would therefore allow the appeal and substitute the order of acquittal with that of conviction and sentence.

Appeal allowed.

Solicitors: *Sri Ram, Chan & Chia.*

KAMARUDDIN v. MARIS PILLAI & ANOR.

[O.C.J. (Abdul Hamid J.) March 7, 1977]
[Kuala Lumpur — Civil Suit No. 561 of 1976]

Damages — Quantum — Multiple Injuries and ¼" shortening.

The plaintiff, aged 33, was a bus conductor. He did vegetable gardening during his free hours. As a result of the accident while riding pillion on a motor cycle, he suffered the following injuries:—

1. Cerebral concussion
2. 3½" laceration over eyelid
3. compound fracture of right tibia and fibula
4. ¼" shortening of the right leg.

At the right ankle dorsiflexion was limited to 15 degrees (normal range 45 degrees) and plantarflexion was limited to 25 degrees (normal range 50 degrees). He would likely suffer osteoarthritis in the ensuing years. The plaintiff would also have difficulties in squatting, climbing, lifting of heavy loads etc.

Held: he should be awarded general damages in the sum of $13,000 for pain and suffering and $12,000 for loss of future earnings at a purchase of 14 years of about $100 a month.

CIVIL SUIT.

B.S. Sidhu for the plaintiff.

G.S. Nijar for the defendant.

Abdul Hamid J.: The appeal seems to be against quantum of damages only as liability has been admitted.

The plaintiff sustained injuries while riding pillion on a motor cycle at 8.00 p.m. on February 13, 1974. He was hospitalised for a total period of approximately five months at Kajang District and Kuala Lumpur General Hospitals. At the time of the accident the plaintiff was an estate bus conductor. His hours of work were between 5.45 and 7.30 a.m., 11.00 a.m. and 2.00 p.m. and 5.00 p.m. and 7.00 p.m. He planted vegetables during his free hours between 8.00 a.m. to 10.00 a.m. and 2.30 to 4.30 p.m. planting cocoa, yam, tapioca and other crops over a two acre lot held by him under Temporary Occupation Licence.

The plaintiff resumed employment six months after the accident and thus the court is only called upon to assess the damages for pain and suffering and the loss of earnings arising out of his inability to continue with the vegetable gardening.

In considering damages for pain and suffering I have had regard to the following injuries sustained by the plaintiff —

1. Cerebral concussion.
2. 1" laceration on forehead.
3. 3½" laceration over eyelid.
4. Compound fracture of right tibia and fibula-lower 1/3rd.

(District Hospital Kajang page 1 AB).

1. 1½" laceration over left forehead.
2. 2" laceration over lateral aspect of right leg.
3. Fracture middle 1/3 right tibia and right medial malleolus.
4. Double fracture of right fibula.

I have also examined very carefully the medical report given by Dr. Mahmood Merican Consultant Orthopaedic Surgeon who stated that there were scars near the eyes, on the forehead, right thumb, index finger and side of right leg. The plaintiff walked with a limp from shortening (¾") of the right leg. The right leg was wasted. At the right ankle dorsiflexion was limited to 15 degrees (normal range 45 degrees) and plantarflexion was limited to 25 degrees (normal range 50 degrees). Dr. Mahmood is of the opinion that the scars and the shortening of the right leg resulting from his injuries will be permanent.

Further examination on December 28, 1976 by Dr. Mahmood Merican indicated that the plaintiff's disabilities have remained as before and that the scars, the shortening and wasting of the right leg and the restriction of movements at the ankle and foot have persisted. The overlap of the bone fragments at the fracture of the tibia produces an obvious deformity of the shin.

Dr. Mahmood also said that the pain in the right ankle if he were to walk far or fast is likely to persist and be made worse by osteoarthritis in the ensuing years.

Mr. Sidhu referred to a few decided cases on quantum of general damages. In the light of the injuries and consequential disabilities, namely, squatting, climbing, lifting of heavy loads, etc., it is my judgment that a sum of $13,000 for pain and suffering would be a fair and reasonable compensation. As regards loss of future earnings I would assess the loss resulting from the loss in the earning capacity in the light of the consequential disabilities of about $100 per month. I assess the loss at $12,000 a purchase of 14 years taking into account the fact that the plaintiff was only 33 years old at the date of the accident. I therefore awarded general damages for pain and suffering in the sum of $13,000 and loss of future earnings $12,000, a total of $25,000 and costs.

Order accordingly.

Solicitors: *B.S. Sidhu & Co.; Cheong Lee & Ong.*